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9
10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

13 ENTROPIC COMMUNICATIONS,
14 LLC,

15 Plaintiff,
16 v.
17

18 COX COMMUNICATIONS, INC.;
19 COXCOM, LLC; AND COX
COMMUNICATIONS CALIFORNIA,
LLC,

20 Defendants,
21
22

23 COX COMMUNICATIONS, INC.;
24 COXCOM, LLC; AND COX
COMMUNICATIONS CALIFORNIA,
LLC,

25 Counter-Claimants,
26 v.
27

28 ENTROPIC COMMUNICATIONS,
LLC; MAXLINEAR, INC.; AND
MAXLINEAR COMMUNICATIONS
LLC,

Counter-Defendants.

Case No. 2:23-cv-1043-JWH-KES (lead)
Case No. 2:23-cv-01047-JWH-KES

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

**COUNTER-DEFENDANTS
MAXLINEAR, INC. AND
MAXLINEAR COMMUNICATIONS,
LLC'S NOTICE OF MOTION AND
MOTION TO DISMISS AMENDED
COUNTERCLAIMS BY COX
COMMUNICATIONS, INC.,
COXCOM, LLC, AND COX
COMMUNICATIONS
CALIFORNIA LLC**

JURY TRIAL DEMANDED

[Request for Judicial Notice
concurrently filed herewith]

Action Filed: Feb. 10, 2023
Counterclaims Filed: Oct. 6, 2023

Hearing:

Date: March 29, 2024
Time: 9:00 a.m.
Place: Courtroom 9D, Santa Ana
Judge: Hon. John W. Holcomb

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 29, 2024, or as soon thereafter as
3 counsel may be heard, in Courtroom 9D of the United States District Court for the
4 Central District of California, located at 411 W. 4th Street, Santa Ana, California,
5 Counter-Defendants MaxLinear, Inc. and MaxLinear Communications, LLC move
6 to dismiss the counterclaims by Cox Communications, Inc. (“Cox
7 Communications”), CoxCom, LLC (“CoxCom”), and Cox Communications
8 California, LLC (“Cox California”).

9 This Motion is based on this Notice of Motion and Motion; on the attached
10 Memorandum of Points and Authorities; on all pleadings, files, and records in this
11 action; on any reply memorandum; on the accompanying Request for Judicial
12 Notice, and on such other argument or evidence that may be presented at the
13 hearing on this Motion. This Motion is made following the conference of counsel
14 pursuant to L.R. 7-3, which took place on January 16, 2024.

Date: February 6, 2024

By: _____ /s/ *Bita Rahebi*
Bita Rahebi

Attorneys for Counter-Defendants
MAXLINEAR COMMUNICATIONS,
LLC AND MAXLINEAR, INC.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Cox Communications, CoxCom, and Cox California (collectively, “Cox”) sidestepped MaxLinear, Inc. and MaxLinear Communications LLC’s (collectively “MaxLinear”) prior motion to dismiss by amending their counterclaims. But the new pleading has the same defects as the original counterclaims.¹ This confirms what MaxLinear told the Court in its initial motion: amendment is futile.

Cox alleges three claims this time: (1) breach of contract (Count I); (2) quasi-contract/unjust enrichment (Count IV); and (3) a new, but duplicative, declaratory judgment claim (Count II). All three counterclaims repeat the same basic assertion: that MaxLinear tried to circumvent its obligation to license its patents on reasonable and non-discriminatory (“RAND”) terms by transferring them to Entropic. Cox believes it is entitled to a RAND license for certain patents essential to the practice of standards developed by the Multimedia over Coax Alliance (“MoCA”), pursuant to MoCA’s Intellectual Property Rights (“IPR”) Policy. The IPR Policy identifies limited obligations to license and specifies the conditions under which such obligations arise.

As a threshold matter, Cox’s Amended Counterclaims should be dismissed for lack of subject matter jurisdiction on four independent grounds. First, CoxCom and Cox California were never members of MoCA. They were only *affiliates* of Cox Communications, which was a member. By the express terms of the IPR Policy and Cox Communications’ own Promoter Agreement with MoCA, CoxCom and Cox California possess neither standing to request a license, nor standing to assert any other cause of action arising under the IPR Policy. (See Request for

¹ This Motion refers to the paragraphs of Cox's pleading (ECF No. 276) before paragraph 515 as the "Answer" and any thereafter as the "Amended Counterclaims." By citing to the pleadings in this action, MaxLinear only accepts them as true for purposes of this Motion.

1 Judicial Notice, Exhibit A (“Promoter Agreement”); IPR Policy (Case No. 23-cv-
2 01047, ECF No. 94-1).)

3 Second, all Cox Counterclaimants lack standing to assert counterclaims
4 against MaxLinear because they fail—again—to allege they *properly* requested a
5 RAND license from Entropic in the manner prescribed by the IPR Policy.

6 Third, Cox lacks standing because it failed to identify an injury-in-fact
7 capable of redress. Cox says that MaxLinear should never have assigned its patents
8 to Entropic, and the transaction should be voided. If true, Cox would not be in a
9 better place. If it is infringing the patents, as Entropic claims, then it would simply
10 owe damages to a different entity. Since reversing the transaction does not change
11 the “injury,” Cox lacks Article III standing.

12 Fourth, Cox’s Amended Counterclaims remain unripe. In its Answer, Cox
13 denies that the asserted patents are “essential.” (Answer ¶¶ 109, 143, 177, 211,
14 245, 279, 313, 347, 381, 415, 449, 483 (denying each allegation).) Its Amended
15 Counterclaims for breach of contract and unjust enrichment, by contrast, contend
16 the opposite. The IPR Policy only applies to patents essential to practicing MoCA
17 standards. Thus, because no cause of action can accrue until the Court determines
18 the patents’ essentiality, Cox’s counterclaims remain speculative and contingent.

19 In the alternative, Cox’s Amended Counterclaims should be dismissed under
20 Rule 12(b)(6) for basic pleading failures. Its breach of contract counterclaim *again*
21 *fails to clearly identify* the operative contract(s), *again fails* to recite their full
22 terms verbatim, *again fails* to plead performance, *again fails* to plausibly plead
23 privity, *again fails* to identify any document expressly showing it is a third-party
24 beneficiary, and *again fails* to plead damages, with its only injury appearing to be
25 that it would prefer to be sued by MaxLinear rather than Entropic.

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1 Cox's rebranded counterclaim of "unjust enrichment/quasi-contract" fails,
2 too. The existence of a contract forecloses any quasi-contract counterclaim as a
3 matter of law, and Cox's own allegations undercut the plausibility of this claim.

4 Lastly, Cox adds a counterclaim for declaratory judgment that the transfer of
5 patents from MaxLinear to Entropic is "void." First, no case or controversy of
6 sufficient immediacy exists when a trier of fact must first determine whether the
7 asserted patents are essential and, thus, whether the IPR Policy even applies.
8 Second, this counterclaim is entirely duplicative, entitling the Court to dismiss with
9 prejudice. And third, Cox pleads no facts (even if true) to permit the conclusion
10 that the transfer is voidable, let alone void.

11 In light of the record that already exists, Cox should not be permitted another
12 bite at the apple. The Court should dismiss with prejudice Counts I, II, and IV of
13 the Amended Counterclaims.

14 **II. SUMMARY OF THE FACTS**

15 **A. MaxLinear**

16 MaxLinear, Inc. is a leading innovator of radiofrequency, analog, digital, and
17 mixed-signal semiconductor solutions. Its technological innovations allow people
18 to connect using faster, smarter, and more efficient communications networks. In
19 2021, MaxLinear, Inc. and MaxLinear Communications LLC (collectively
20 "MaxLinear") sold a portfolio of patents to plaintiff, Entropic Communications,
21 LLC ("Entropic"). (*See* Case No. 23-cv-01047, ECF No. 1 ("Compl.") ¶ 32-33.)

22 **B. MoCA and the IPR Policy**

23 Entropic, Inc. was a founding member of MoCA. (*See id.* ¶ 38.) Cox
24 Communications joined MoCA in 2005, six years before MaxLinear joined in
25 2011. (Am. Countercls. ¶¶ 534, 552.) MoCA itself is a non-profit corporation.
26 (*See* IPR Policy § 1.) It serves as a standard-setting organization formed to
27 "develop[] and promot[e] specifications for the transport of digital entertainment

1 and information content over in-home coaxial environments” and to “develop a
2 certification process for products implementing the specifications to ensure
3 interoperability between products and manufacturers.” (*Id.*)

4 MoCA adopted an IPR Policy, which “outlines the policy of the Alliance
5 regarding the incorporation and use of certain proprietary materials” in MoCA
6 standards. (*Id.*) The IPR Policy imposes upon MoCA’s members—known as
7 Alliance Parties—and their affiliates a limited obligation to license “Essential
8 Patent Claims.” (*Id.* §§ 2, 5.1.1.) Essential Patent Claims are claims that (1) are
9 necessarily infringed by complying with the technical specifications of an approved
10 MoCA standard and (2) lack commercially reasonable non-infringing alternatives.
11 (*See id.* § 2.)

12 An Alliance Party need only “offer and attempt to negotiate” a license “upon
13 the written request” of another Alliance Party. (*Id.* § 5.1.1.) An Alliance Party’s
14 licensing obligation is limited to Essential Patent Claims. Importantly, an Alliance
15 Party and *its* “Affiliates” owe this limited licensing obligation only to other
16 Alliance Parties, *not* to their affiliates. (*Id.* §§ 2, 5.1.1.)

17 If an Alliance Party leaves MoCA, it may request a license only under those
18 MoCA standards approved before it terminated its membership. (*Id.* § 7.2.) A
19 former Alliance Party may not invoke the IPR Policy to request a license to
20 standards approved *after* its MoCA membership ended. (*Id.*)

21 **C. Entropic Sues Cox for Infringement**

22 Before initiating this action, Entropic alleges it tried to “engage Cox and/or
23 its agents in good faith licensing discussions regarding Entropic’s patent portfolio,”
24 including the patents at issue here, prior to filing its Complaint. (Compl. ¶ 27.)
25 Despite multiple letters, Cox admits it “has not responded” to the “January 2, 2023”
26 letter and further denies receiving the August 9, 2022, and December 23, 2022,
27 communications alleged in Entropic’s Complaint. (Answer ¶ 27.) In February

1 2023, Entropic filed this lawsuit because Cox has “take[n] advantage of MoCA
2 without paying appropriate licensing fees for the technology.” (Compl. ¶ 4.)

3 **D. Cox Fails to Cure Its Deficient and Unsupported Counterclaims
4 Against MaxLinear**

5 After filing its Answer in May 2023 (Case No. 23-cv-01047, ECF No. 48),
6 Cox amended it to add two counterclaims against MaxLinear in October 2023. (See
7 Case No. 23-cv-01047, ECF No. 94 (the “FAACC”) ¶¶ 550-555, 560-564.) At that
8 time, Cox attached a copy of MoCA’s IPR Policy, but Cox neither described nor
9 attached the related agreements to which the IPR Policy referred. Cox alleged that
10 MaxLinear “sought to avoid encumbrances on its patents” under the IPR Policy by
11 transferring MoCA patents to Entropic. (*Id.* ¶ 515.) Cox also alleged that, “to the
12 extent the Asserted Patents contain patent claims essential to the MoCA standard,
13 Cox is entitled to receive an appropriate license on FRAND terms from MaxLinear,
14 and only MaxLinear.” (*Id.* ¶ 555.)

15 On December 22, 2023, MaxLinear moved to dismiss. (ECF No. 235.)
16 MaxLinear pointed out issues with Article III standing and a myriad of other
17 pleading defects. Apparently recognizing that it had no good-faith basis to oppose
18 the motion to dismiss, Cox elected to file Amended Counterclaims. Even with the
19 benefit of extra time and another bite at the apple, Cox continues to lack standing,
20 alleges incognizable claims, and fails to cure many of its fatal pleading failures.

21 **III. LEGAL STANDARD**

22 **A. Rule 12(b)(1)**

23 Rule 12(b)(1) allows the dismissal of a counterclaim for lack of subject-
24 matter jurisdiction, which includes standing. *See Chandler v. State Farm Mut.
25 Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). “It is axiomatic that ‘[f]ederal
26 courts are courts of limited jurisdiction.’” *Vacek v. U.S. Postal Serv.*, 447 F.3d
27 1248, 1250 (9th Cir. 2006) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*,

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1 511 U.S. 375, 377 (1994)). “The Article III case or controversy requirement limits
2 federal courts’ subject matter jurisdiction by requiring, *inter alia*, that plaintiffs have
3 standing and that claims be ‘ripe’ for adjudication.” *Chandler*, 598 F.3d at 1121.
4 A court must dismiss an action where the party fails to show injury-in-fact,
5 traceability, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-
6 61 (1992). Ripeness similarly enables a court to dispose of a matter that is
7 premature for review, *e.g.*, because the purported injury is too speculative and may
8 never occur. “Because standing and ripeness pertain to federal courts’ subject
9 matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss.”
10 *Chandler*, 598 F.3d at 1122.

11 As the party invoking the federal court’s jurisdiction, Cox “bears the burden”
12 of alleging specific facts sufficient to prove its Article III standing. *Id.*; *see also*
13 *Lujan*, 504 U.S. at 560-61. Cox must do so for “each claim” and “each form or
14 relief” that it seeks. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342, 352
15 (2006) (internal citations and quotations omitted).

16 **B. Rule 12(b)(6)**

17 A counterclaim should be dismissed under Rule 12(b)(6) where the
18 counterclaimants fail to assert a “cognizable legal theory” or the counterclaims
19 contain “[in]sufficient facts . . . to support a cognizable legal theory.” *L.A. Lakers,*
20 *Inc. v. Fed. Ins. Co.*, 869 F.3d 795, 800 (9th Cir. 2017) (internal citation and
21 quotation omitted). To survive a motion to dismiss, the counterclaim must allege
22 “more than labels and conclusions” or a “formulaic recitation of the elements of a
23 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must be
24 pleaded with “sufficient factual matter, accepted as true, to state a claim to relief
25 that is plausible on its face,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal
26 quotation and citation omitted), and that rises “above the speculative level,”
27 *Twombly*, 550 U.S. at 555. A counterclaim must contain “well-pleaded facts” from
28

1 which the Court can “infer more than the mere possibility of misconduct.” *Iqbal*,
2 556 U.S. at 679.

3 **IV. ARGUMENT**

4 **A. The Court Should Dismiss the Amended Counterclaims for Lack
5 of Standing and Ripeness Under Rule 12(b)(1)**

6 Cox’s Amended Counterclaims are unripe and lack any plausible injury-in-
7 fact that can be redressed by a favorable decision. The “irreducible constitutional
8 minimum of standing” requires an injury-in-fact. *Lujan*, 504 U.S. at 560. “To
9 establish an injury in fact, a plaintiff must show that he or she suffered ‘an invasion
10 of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or
11 imminent, not conjectural or hypothetical.’” *Id.* (citation omitted). Moreover, it
12 must be ““likely”” that “the injury will be ‘redressed by a favorable decision.’” *Id.*
13 at 561 (citation omitted). “Since the[se] are not mere pleading requirements but
14 rather an indispensable part of the plaintiff’s case,” a plaintiff must support its
15 alleged injury-in-fact and redressability “in the same way as any other matter on
16 which [it] bears the burden of proof.” *Id.*

17 **1. CoxCom and Cox California lack standing as affiliates**

18 Whereas Cox Communications now pleads that it was once a member of
19 MoCA, neither CoxCom nor Cox California (collectively, the “Cox Affiliates”)
20 ever were. (*See* Am. Countercls. ¶ 552.) That means they lack standing because
21 the IPR Policy does not provide rights to “Affiliates” of Alliance Party members.
22 (*See* IPR Policy § 2 (defining “Affiliates” as distinct from “Alliance Party(ies)”).)
23 Thus, the Cox Affiliates must be dismissed for lack of standing.

24 The IPR Policy only confers RAND rights on Alliance Parties, but not their
25 Affiliates. Section 5.1.1 provides: “upon the written request of any other then-
26 current Alliance Party, each Alliance Party agrees to offer and attempt to negotiate
27 a license to the requesting Alliance Party(ies) . . . such Alliance Party’s and its

1 Affiliates' Essential Patent Claims.'" By the plain text, Alliance Parties *alone* enjoy
2 the right to request RAND licenses, not their Affiliates. And the IPR Policy is clear
3 that there are no licenses unless expressly provided. (*See* IPR Policy § 5.3.)
4 Conversely, the IPR Policy imposes obligations on Affiliates: they must give
5 licenses, but they cannot expect to receive them in return. (*See id.* §§ 2, 5.1.) Cox
6 Communications' own Promoter Agreement with MoCA clearly articulates why the
7 Cox Affiliates lack standing to assert any right under the IPR Policy:

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 (Promoter Agreement § 6 (emphasis added).)

15 As pled, for the Cox Affiliates, there can be no injury-in-fact, and no case or
16 controversy, arising from MaxLinear's transfer of patents to Entropic, where no
17 legal right to a RAND license—or expectation thereof—ever existed. That fact
18 removes any Article III standing for the Cox Affiliates arising under the IPR Policy.

19 **2. Cox failed to show it made a proper and compliant request
20 for a license per the IPR Policy**

21 In its prior motion, MaxLinear observed that Cox never pleaded that it was
22 unable to license any of the asserted patents or that it even requested a license from
23 Entropic or MaxLinear. (ECF No. 235 at 15-16.) Cox again makes no such
24 allegation, save for one sentence: "Plaintiff additionally did not and, despite Cox's
25 prior request in writing, has not, provided or procured any RAND-compliant offer
26 to the relevant patents consistent with the IPR Policy." (Am. Countercls. ¶ 571.)
27 That cryptic allegation does not satisfy Cox's pleading obligations.

Both the timing and the identities of the requestor and requestee are crucial for standing. Returning to Section 5.1.1 of the IPR Policy, it states: “following Board of Director approval of an Approved Draft Deliverable and upon the written request of any other ***then-current Alliance Party***, each Alliance Party agrees to offer and attempt to negotiate a license to the requesting Alliance Party(ies). . . .” (Emphasis added.) If, however, an Alliance Party ceases to be a member, then they shall be entitled to request a RAND license under section 5.1.1:

8 . . . ***but only*** to the extent necessary to use, make, have made, offer for
9 sale, sell and import Fully Compliant Products ***in conformance with*** or
10 as described in ***Draft Deliverables or Approved Draft Deliverables***
11 approved by the Board of Directors ***prior to such expiration or***
12 ***termination***; and []the terminated Alliance Party ***shall no longer be***
13 ***entitled to request or require any Alliance Party to license*** such
14 Alliance Party's Essential Patent Claims to the terminated Alliance
15 Party as provided in Sections 5.1 (RAND Licenses) to any extent with
 regard to Fully Compliant Products in conformance with or as described
 in ***Draft Deliverables or Approved Draft Deliverables approved*** by the
 Board of Directors ***after such expiration or termination***.

16 (IPR Policy § 7.1 (emphasis added).) In view of the IPR Policy, Cox's allegation
17 quickly unravels for three reasons.

18 First, it is unclear which Cox entity made the request. And since the Cox
19 Counterclaimants never say who made the request, they have collectively failed to
20 demonstrate standing on the “face of the pleadings,” thus warranting dismissal.
21 *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

22 Second, Cox needed to plead which Draft or Approved Deliverables are at
23 issue because, again, timing matters. (See IPR Policy §§ 5.1.1, 7.1.) It has failed to
24 do so. And nothing in the IPR Policy protects an Alliance Party member—current
25 or former—from a lawsuit when it neglects to request a license before infringing
26 essential patents. Quite the contrary; the IPR policy expressly permits the filing of
27 a lawsuit for damages. (*Id.* § 5.1.1.)

1 Third, Cox never pleads that Entropic refused to negotiate a RAND license in
2 good faith or that Entropic flatly denied it a RAND license. Cox and Entropic’s
3 failure to negotiate a RAND license is no indicia of MaxLinear’s alleged failings to
4 encumber its patents.

5 Because Cox did not remedy this key infirmity, *i.e.*, its failure to plead that it
6 properly requested a RAND license in the manner required by the IPR Policy, the
7 Court should dismiss for lack of standing, without leave to amend.

8 **3. Cox lacks standing because it does not identify a concrete
9 and particularized injury capable of redress**

10 In its prior pleading, Cox alleged conclusory injury to its “business or
11 property” has “created additional expenses and uncertainty for Cox” without
12 providing any detail on what those injuries were, or how assigning patents to
13 Entropic caused those injuries. (FAACC ¶¶ 554, 563.) Cox failed to cure these
14 deficiencies in the Amended Counterclaims.

15 Cox again does not explain how MaxLinear’s patent assignment to Entropic
16 caused it any injury or describe what the injury is in any detail. (*See* Am.
17 Countercls. ¶ 578.) Instead, Cox includes the same vague and conclusory
18 allegations that it “has been injured in [its] business or property, and has suffered
19 and will continue to suffer damages” and that the transfer of patents has “created
20 additional expense and uncertainty for Cox and its business.” (*Id.* ¶¶ 578,
21 592.) But these allegations offer zero facts or details explaining the nature of Cox’s
22 purported damages or which “business or property” is at issue. Nor do they provide
23 any clue as to what expenses Cox may have incurred and for what purpose.

24 Cox speculates that, but for MaxLinear’s purported (and unidentified)
25 breach, “this case would not have been filed.” (*Id.* ¶ 573.) But the pendency of
26 Entropic’s litigation against MaxLinear cannot supply the requisite harm for
27 standing. “Litigation costs are insufficient to establish standing for purposes of
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1 Article III.” *San Diego Unified Port Dist. v. Monsanto Co.*, 309 F. Supp. 3d 854,
2 866 (S.D. Cal. 2018) (costs in defending litigation that “would not have been
3 initiated” absent counter-defendant’s action do not provide standing).

4 This makes particular sense here, where Cox will have to bear the costs of
5 litigation and pay damages regardless of who the proper patent owner is. If
6 MaxLinear’s patent transfer to Entropic is void, as Cox alleges, that would simply
7 mean that MaxLinear is the patent owner. Cox then would be liable to MaxLinear
8 for any patent infringement, not Entropic—and the purported harm is the same.

9 Further, Cox lacks standing to enforce the IPR Policy’s assignment language
10 provision, as it has not suffered any redressable injury caused by MaxLinear. The
11 IPR Policy provides that RAND obligations attach to Essential Patent Claims, even
12 if the assignment is silent on the obligations. (IPR Policy § 5.1.2 (“[T]he licensing
13 obligations under this IPR Policy are intended to be binding (e.g., as encumbrances)
14 on all successors-in-interest regardless of whether such provisions are included.”).)
15 Cox has therefore not suffered, nor can it allege, any cognizable injury caused by
16 MaxLinear.

17 Because Cox has not articulated a “concrete” and “particularized” injury, the
18 Court should dismiss its Amended Counterclaims for lack of Article III
19 standing. *Lujan*, 504 U.S. at 561.

20 **4. The counterclaims remain unripe**

21 Cox again runs into trouble with regards to ripeness. The pivotal concern for
22 ripeness is “whether the case involves uncertain or contingent future events that
23 may not occur as anticipated, or indeed may not occur at all.” *Richardson v. City &*
24 *Cty. of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997) (internal quotation and
25 citation omitted). Where a dispute hangs on “future contingencies that may or may
26 not occur,” *Clinton v. Acequia, Inc.*, 94 F.3d 568, 572 (9th Cir. 1996), it is too

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“impermissibly speculative” to present a justiciable controversy. *Portland Police Ass’n v. City of Portland*, 658 F.2d 1272, 1273-74 (9th Cir. 1981).

To the extent that Cox can allege an injury at all, it stems from speculative future contingencies that may never come to pass, *e.g.*, what the RAND terms will be, whether Cox infringes, and whether the jury will award any royalty on non-RAND terms. Even before that, the Court must first determine whether the asserted patents are essential to MoCA—which Entropic alleges, but Cox denies. (*Compare* Compl. ¶¶ 109, 143, 177, 211, 245, 279, 313, 347, 381, 415, 449, 483 *with* Answer ¶¶ 109, 143, 177, 211, 245, 279, 313, 347, 381, 415, 449, 483 (denying each allegation).) If deemed essential, then Cox must first seek and then pay for the appropriate RAND license. (*See* IPR Policy § 5.1.1 (applicable only to Essential Patent Claims).) If deemed otherwise, then the IPR Policy does not apply, and Cox is left without any basis to sue MaxLinear. Without a finding one way or another, Cox’s Amended Counterclaims remain entirely unripe for adjudication.

Having failed twice to articulate Article III standing and ripeness, the Court must dismiss the Amended Counterclaims against MaxLinear. *See Chandler*, 598 F.3d at 1123. Without a legal wrong, Cox has no basis to invoke the Court's jurisdiction. Leave to amend here is also inappropriate, as subject matter jurisdiction must be maintained throughout litigation. *See Fed. R. Civ. P.* 12(h)(3). The Court must dismiss Cox's lawsuit in full for lack of standing.

B. Cox Fails to Properly Plead a Breach of Contract Claim, Which Should Be Dismissed Under Rule 12(b)(6) in the Alternative

23 A cause of action for breach of contract requires proof of the following
24 elements: (1) existence of the contract; (2) plaintiff's performance or excuse for
25 nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of
26 the breach. *CDF Firefighters v. Maldonado*, 158 Cal. App. 4th 1226, 1239 (2008).
27 Cox's first counterclaim fails to plead all required elements.

1. Cox fails to allege the fundamentals of breach of contract

a. Cox neglects to identify the operative contract in its pleadings

Cox fails to plead the essential elements of a contract claim, beginning with the identification of the operative contract (or contracts). Throughout its pleading, Cox casually refers to MaxLinear’s “contractual commitments” and “obligations” to MoCA. (*See* Am. Countercls. ¶¶ 515, 544, 561-62, 570, 576-77, 584-85.) While Cox clearly invokes its right to sue based on one Cox entity’s membership in MoCA and the IPR Policy, it also alludes to MaxLinear’s 2011 “Associate Agreement” and a “Membership Agreement” and MoCA’s “bylaws.” (*Id.* ¶¶ 539, 546.) Due to Cox’s imprecision, it remains unclear to what extent Cox believes MaxLinear is in breach of contractual obligations beyond the IPR Policy. To satisfy Rule 8, Cox needs to clearly identify and plead all of the contracts at issue. *See* Fed. R. Civ. P. 8(a). This should come as no surprise to Cox; MaxLinear specifically raised this in its earlier dismissal motion. Lack of adequate notice, again, warrants dismissal.

b. Cox impermissibly refers to prior pleadings

Cox introduces new pleading errors in its Amended Counterclaims. “Every amended pleading . . . ***shall be complete*** including exhibits. The amended pleading ***shall not*** refer to the prior, superseded pleading.” L.R. 15-2 (emphasis added). Cox violates this basic pleading rule in two ways. First, the Counterclaims refer back to exhibits from prior pleadings. (*See* Am. Countercls. ¶¶ 538-39, 541, 547-49, 560, 565, 581 (referring to Exhibits A and B to the FAACC).) Second, Cox invokes documents allegedly produced in discovery but not attached to the pleadings. (*See id.* ¶ 538 n.10.) Cox clearly knows how to file exhibits. The Court should not permit Cox to circumvent the Local Rules.

c. Cox fails to satisfy the requirement that contracts be pleaded *in haec verba* or according to legal effect

Cox again failed to attach the agreements for the Court. MaxLinear reminded Cox of the law in November, and filed a detailed motion in December explaining the legal requirements. (ECF No. 235.)

To show the existence of a contract, “a party may plead a written contract ‘either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect.’” *12909 Cordary, LLC v. Berri*, 2023 WL 6785798, at *3 (C.D. Cal. Apr. 17, 2023) (Holcomb, J.); *Twaite v. Allstate Ins. Co.*, 216 Cal. App. 3d 239, 252, (1989), modified (Dec. 7, 1989) (explaining that a breach claim must articulate contract terms “either *in haec verba* or according to legal effect”).

Cox once again chose not to attach the MoCA Bylaws and other “Applicable Agreements” referenced in Sections 2 and 5.1.2 of the IPR Policy. Absent those documents, Cox’s counterclaim is woefully incomplete and merits dismissal. *See Fishbaugh v. Bulgadarian*, 2021 WL 3598579, at *4 (C.D. Cal. July 8, 2021) (Holcomb, J.) (dismissing breach counterclaim where counterclaimant neither “attach[ed] the alleged contract nor fully plead[ed] its terms”).

d. Cox cannot possibly allege the requisite privity of contract or claim it is a third-party beneficiary

At a minimum, at this stage, the Cox Affiliates can be dismissed based on the record before the court. Only parties to a contract “have rights or liabilities under the contract.” *McCormick v. US Bank, N.A.*, 2012 WL 12869274, at *4 (S.D. Cal. Oct. 30, 2012). A “cause of action for breach of contract requires privity of contract between the plaintiff and the defendant.” *Simoni v. Am. Media, Inc.*, 2014 WL 12597640, at *3 (C.D. Cal. July 22, 2014), *aff’d*, 673 F. App’x 782 (9th Cir. 2017). One exception to this rule pertains to third-party beneficiaries. See *Transamerica Life Ins. Co. v. Ponso*, 2020 WL 6875181, at *3 (C.D. Cal. Nov. 18,

1 2020). Under California law, “a contract must be made expressly for the benefit of
2 a third party for that party to enforce the contract as a third-party beneficiary.”
3 *Nat'l Rural Telecomms. Co-op. v. DIRECTV, Inc.*, 319 F. Supp. 2d 1094, 1100
4 (C.D. Cal. 2003). “The test for determining whether a contract was made for the
5 benefit of a third person is whether an intent to benefit a third person appears from
6 the terms of the [c]ontract.” *Ponso*, 2020 WL 6875181, at *4 (internal quotation
7 and citation omitted). The “terms of the contract must demonstrate the *express*
8 *intent* to confer the benefit.” *Sherman v. Pepperidge Farm, Inc.*, 2023 WL
9 5207458, at *4 (C.D. Cal. Apr. 28, 2023) (Holcomb, J.) (emphasis modified). The
10 Cox Affiliates were never members of MoCA and thus have no colorable breach of
11 contract counterclaim in the first place.

12 **2. Cox fails to allege its performance under any contract**

13 “It is elementary a plaintiff suing for breach of contract must prove it has
14 performed all conditions on its part or that it was excused from performance.”
15 *Consol. World Invs., Inc., v. Lido Preferred Ltd.*, 9 Cal. App. 4th 373, 380 (1992).
16 As discussed at length in Part IV.A.1, *supra*, Cox failed to plead sufficient facts to
17 show that it made a “written request” compliant with the IPR Policy. (*See* IPR
18 Policy § 5.1.1.) Not only is Cox required to plead it made a written request, but it
19 also must plead that it needs this license for “Fully Compliant Products” that
20 conform with Approved Draft Deliverables. (*Id.*) As a former MoCA member,
21 Cox is entitled only to a license under Draft Deliverables or Approved Draft
22 Deliverables approved *prior* to Cox’s termination. (*See id.* § 7.1. (“[T]he
23 terminated Alliance Party shall no longer be entitled to request or require” RAND
24 licenses “to *any* extent with regard to Fully Compliant Products in conformance
25 with or as described in Draft Deliverables or Approved Draft Deliverables approved
26 by the Board of Directors *after such expiration or termination.*”) (emphasis
27 added).) Cox does not allege any of its products are “Fully Compliant Products” or
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1 identify any “Approved Draft Deliverable” with which its products conform—let
2 alone one that was approved prior to its termination from MoCA. Thus, Cox also
3 failed to plead factual allegations sufficient to satisfy the element of performance.

4 **3. Cox fails to allege breach**

5 Cox attempts to plead the third element of breach by throwing everything in
6 the kitchen sink. None of it sticks. To start, Cox says MaxLinear “attempt[ed] to
7 circumvent its obligations” to offer RAND licenses, to maintain the “authority” to
8 grant those licenses, and to “own any necessary patents” simply by selling its
9 patents to Entropic. (Am. Countercls. ¶ 576(a)-(d).) That allegation makes no
10 sense. The IPR Policy expressly contemplates the ability of Alliance Party
11 members, like MaxLinear, to transfer its patents to third parties. (*See* IPR Policy
12 § 5.1.2.) And it provides wide latitude on the manner in which the transferring
13 party complies with Section 5.1.2:

14 **5.1.2 Transfer of Essential Patent Claims.** Any sale,
15 assignment or other transfer by an Alliance Party or its
16 Affiliates to an unaffiliated third party of an Essential
17 Patent Claim, or any patent or patent application that
18 reasonably may contain or result in an Essential Patent
19 Claim, shall be subject to the terms in this IPR Policy. An
20 Alliance Party may choose the manner in which it complies
21 with this Section 5.1.2, provided that any agreement for
22 transferring or assigning Essential Patent Claims, or any
23 patent or patent application that reasonably may contain or
24 result in an Essential Patent Claim, includes a provision
25 that such transfer or assignment is subject to existing
26 licenses and obligations to license imposed on the Alliance
27 Party by this Agreement and the Alliance Bylaws.

28 Thus, “if the defendant did what it was expressly given the right to do, there can be
no breach.” *Circle Inn Dev. & Mgmt., Inc. v. Glob. Signal Acquisitions IV LLC*,
2022 WL 18585986, at *4 (C.D. Cal. June 14, 2022) (Holcomb, J.) (dismissing
implausible breach of contract claim without leave to amend) (internal quotation
and citation omitted). This allegation, too, is facially implausible.

1 Next, Cox says MaxLinear “improperly assigned” the patents “free of any
2 encumbrances, including those created by the IPR Policy” because “[n]othing in the
3 Patent Purchase Agreement complies with the IPR Policy anti-circumvention and
4 assignment provisions.” (Am. Countercls. ¶¶ 576(e), 558.) Not so.

5 The Court should find the allegation implausible on its face as it is
6 contradicted by another one of Cox’s allegations. Curiously, in the very same
7 pleading, Cox states, “MaxLinear publicly noted its membership in MoCA, . . . and,
8 in the course of negotiating the lengthy and complex Patent Purchase Agreement,
9 ***Plaintiff learned of and was informed of the MoCA standards.***” (*Id.* ¶ 561
10 (emphasis added).) The Court should not accept Cox’s facially implausible legal
11 conclusion of breach.

12 And Cox knows full well this allegation is implausible. It takes great pains
13 to characterize a “secret” Patent Purchase Agreement, but then does not attach it to
14 its Amended Counterclaims. MaxLinear submits it for the Court’s consideration.
15 (*See* Request for Judicial Notice, Exhibit B (“PPA”).) [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] (*Id.*, Ex. I.)

22 Additionally, Cox wrongly asserts that the IPR Policy requires MaxLinear to
23 “retain the right to grant any licenses for essential patents.” (Am. Countercls.
24 ¶¶ 550, 576.) Were this the case, MaxLinear—or any MoCA member—could
25 never assign the full rights of Essential Patent Claims to a third party. This is
26 facially absurd and unfounded and flies in the face of an express provision allowing
27 transfer. (*See* IPR Policy § 5.1.2.)

28

Lastly, Cox accuses MaxLinear of delivering confidential information to Entropic related to MoCA standards. (*See* Am. Countercls. ¶¶ 569, 576(g).) That allegation, too, remains inadequately pleaded. Cox does not allege that it possesses the right—as a non-MoCA member—to enforce the confidentiality obligations on behalf of MoCA. Nor does it claim that it contributed to this specific document. This failure to allege contribution is highlighted by Cox’s omission of allegations that Cox complied with Section 7.3 of the IPR Policy, which requires that within 20 business days after the termination of a membership, the former Alliance Party identify in writing, “with reasonable specificity,” any such confidential information.

(See Promoter Agreement § 5.5)

Cox fails to scrounge up a single factual allegation to support its conclusory accusation that MaxLinear actually breached any particular confidentiality obligation, rendering it far short of a claim under *Twombly* or *Iqbal*.

4. Cox fails to allege causation and related damages

“Causation of damages in contract cases, as in tort cases, requires that the damages be proximately caused by the defendant’s breach, and that their causal occurrence be at least reasonably certain.” *US Ecology, Inc. v. California*, 129 Cal. App. 4th 887, 909 (2005) (internal quotation and citation omitted). As discussed above, Cox has failed to plead sufficient allegations to show injury or how MaxLinear would have caused such injury. Cox avers that it is entitled to a license—but only from MaxLinear and not from Entropic. This allegation does not

1 support Cox's damages claims because (1) the IPR Policy itself provides that
2 assignments are valid, and (2) Cox has not pleaded any facts to show that Entropic
3 seeks remedies other than those that MaxLinear could equally assert, had it kept its
4 patents. Accordingly, Cox fails to plead causation and damages for a second time.
5 Its counterclaim should be dismissed without leave to amend.

6 **C. Cox Fails to State a Claim for Declaratory Judgment**

7 For declaratory relief, "the actual controversy between the parties must
8 relate to a claim upon which relief can be granted." *Leadsinger, Inc. v. BMG*
9 *Music Publishing*, 429 F. Supp. 2d 1190, 1193 (C.D. Cal. 2005). "[A] federal
10 court may decline to address a claim for declaratory relief where the substantive
11 claims would resolve the issues raised by the declaratory action." *See Cove*
12 *Partners, LLC v. XL Specialty Ins. Co.*, 2016 WL 461918, at *12 (C.D. Cal., Feb.
13 2, 2016) (citation omitted).

14 Here, Cox's request for declaratory relief depends entirely on the same facts
15 and issues as its breach of contract counterclaim. Because that claim is deficient,
16 and the declaratory judgment claim is nothing more than a duplication of the breach
17 claim, the Court should dismiss Cox's declaratory relief request with prejudice. *See*
18 *Area 55, Inc. v. Amazon.com, Inc.*, 2011 WL 13101727, at *3 (S.D. Cal. July 25,
19 2011) (dismissing declaratory judgment counterclaim where "no valid breach of
20 contract claim ha[d] been stated"); *EurAuPair Int'l, Inc. v. Ironshore Specialty Ins.*
21 *Co.*, 787 F. App'x 469, 471 (9th Cir. 2019) (affirming dismissal of declaratory
22 judgment claim where dismissal of breach of contract claims meant there was no
23 actual controversy); *United Safeguard Distrib. Ass'n, Inc. v. Safeguard Bus. Sys., Inc.*,
24 145 F. Supp. 3d 932, 961 (C.D. Cal. 2015) (dismissing with prejudice
25 declaratory relief claim as "merely duplicative recitations of [plaintiffs'] breach of
26 contract claim").

27 Cox's declaratory relief request, at least as to the Cox Affiliates, also fails for
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lack of standing. As noted in Parts IV.A.1 and IV.B.1.d above, the Cox Affiliates were never MoCA members and are not intended beneficiaries under the IPR Policy or the Promoter Agreement. *See Dicion v. Mann Mortg., LLC*, 718 Fed. App'x 476, 478 (9th Cir. 2017) ("[T]hird parties do not have enforceable contract rights unless they are intended third party beneficiaries.") (internal quotation and citation omitted). Because Cox's declaratory relief counterclaim falsely assumes that it has rights under the IPR Policy, it should be dismissed.

D. Cox Cannot State a Claim for Unjust Enrichment or Quasi-Contract

1. No cause of action for unjust enrichment exists in California

Cox amended its unjust enrichment counterclaim to add the phrase "quasi-contract" to its caption, but that cosmetic changes did nothing to salvage the claim.

2. Cox cannot simultaneously plead quasi-contract when it pleads a real contract

"[A]s a matter of law, a quasi-contract action for unjust enrichment does not lie where, as here, express binding agreements exist and define the parties' right." *Cal. Med. Ass'n, Inc. v. Aetna U.S. Healthcare of Cal., Inc.*, 94 Cal. App. 4th 151, 172 (2001). Because Cox insists that a binding contract exists, the quasi-contract claim cannot stand, even on the pleadings. *See Mohandas v. Wells Fargo Bank, N.A.*, 2023 WL 5506004, at *18 (C.D. Cal. July 13, 2023) (plaintiffs cannot plead both breach of an enforceable contract and unjust enrichment without denying existence of enforceable contract); *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1389-90 (2012) (same). This doctrine requires the Court to dismiss with prejudice as a matter of law.

1 **3. Cox lacks sufficient allegations to plausibly assert a**
2 **counterclaim for quasi-contract**

3 Cox broadly asserts that MaxLinear benefited from Cox’s participation in
4 MoCA. (See Am. Countercls. ¶¶ 588-90.) Those allegations do not state a claim
5 for quasi-contract for three reasons.

6 First, allegations that MaxLinear benefited from MoCA (e.g., learning of
7 draft MoCA specifications), or that MoCA benefited from Cox’s “interaction” with
8 it (e.g., payment of dues), do not entitle Cox to seek relief from MaxLinear. “A
9 person who, incidentally to the performance of his own duty or to the protection or
10 the improvement of his own things, has conferred a benefit upon another, is not
11 thereby entitled to contribution.” *Aetna*, 94 Cal. App. 4th at 174 (internal citation
12 omitted). On its very face, Cox has not stated a claim.

13 Second, to state this counterclaim, Cox must allege MaxLinear “has been
14 unjustly conferred a benefit through mistake, fraud, coercion, or request.” *Pargett*
15 *v. Wal-Mart Stores, Inc.*, 2020 WL 5028317, at *6 (C.D. Cal. Apr. 10, 2020). Cox
16 says MaxLinear made “false and misleading representations” that it would retain
17 rights to grant licenses on certain patents. (See Am. Countercls. ¶ 589.) Because
18 those allegations “sound in fraud,” Cox must meet the heightened pleading standard
19 of Federal Rule of Civil Procedure 9(b). *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d
20 1097, 1103 (9th Cir. 2003); *see also In re Arris Cable Modem Consumer Litig.*,
21 2018 WL 288085, at *10 (N.D. Cal. Jan. 4, 2018) (dismissing quasi-contract claim
22 for failure to satisfy Rule 9(b)). Cox falls well short of Rule 9(b)’s heightened
23 standard because it never precisely identifies **which** statements were false or
24 misleading, **how** they could be false or misleading (especially when the IPR Policy
25 permits patent sales), or **when** they occurred. *See Ebeid ex rel. United States v.*
26 *Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010).

1 Third, Cox cannot sue for quasi-contract without alleging that it *directly*
2 conferred a benefit to MaxLinear. *See* 1 Witkin, *Summary 11th Contracts* § 1055
3 (2023) (collecting cases). Here, however, Cox only alleges it conferred benefits to
4 MoCA, *e.g.*, devoting “monetary and personnel resources **to MoCA**” and making
5 “investments **in MoCA**.” (Am. Countercls. ¶ 592 (emphasis added).) Since the
6 benefits accrued to MoCA, Cox’s quasi-contract counterclaim is untenable.

7 **E. Leave to Amend Would Be Futile**

8 The Court should dismiss Cox’s Amended Counterclaims for lack of
9 standing. *See* Fed. R. Civ. P. 12(b)(1).

10 The Ninth Circuit instructs courts to consider five factors when considering
11 whether to allow leave to amend under Rule 15: (1) bad faith, (2) undue delay,
12 (3) prejudice to the opposing party, (4) the futility of amendment, and (5) whether
13 the plaintiff has previously amended his or her complaint. *See Nunes v. Ashcroft*,
14 375 F.3d 805, 808 (9th Cir. 2004). “Futility alone can justify the denial of a motion
15 for leave to amend.” *Id.* Amendment was demonstrably futile and will be again.

16 Cox is no *pro se* plaintiff. It knew how to state a claim for breach of contract
17 and how to identify a faulty one. *See, e.g., Lyons v. Coxcom, Inc.*, 718 F. Supp. 2d
18 1232, 1239 (S.D. Cal. 2009) (where Cox successfully moved to dismiss an
19 insufficiently pleaded breach of contract claim). It was involved in MoCA across
20 three decades. Its original failure to plead breach of contract from the get-go
21 suggested it could not. Having already amended once, its renewed failure to plead
22 that very same counterclaim, after multiple meet-and-confers, and a prior motion on
23 the same point, *confirms* that it cannot. *See Nunes*, 375 F.3d at 808.

24 Worse, this latest amendment reveals Cox’s bad-faith motivations. Cox
25 refuses to attach to its complaint the very agreements it is referencing. That
26 reticence is revealing. Cox knows that it will not survive the pleading stage if
27 forced to plead the contracts. Cox has amended its pleadings *twice already* and

1 does not deserve to saddle MaxLinear with even more briefing and discovery costs.
2 Dismissal without leave to amend is strongly warranted here.

3 **V. CONCLUSION**

4 The Court should dismiss with prejudice the Amended Counterclaims.

5 MaxLinear has patiently outlined the deficiencies for months. Cox has not been
6 able to address these fatal defects, despite multiple opportunities to do so.

7 Dated: February 6, 2023

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9
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CERTIFICATE OF COMPLIANCE

2 The undersigned, counsel of record for Counter-Defendants MAXLINEAR,
3 INC. and MAXLINEAR COMMUNICATIONS LLC, certifies that this brief
4 contains 6997 words, which complies with the word limit of L.R. 11-6.1

5 Dated: February 6, 2024

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